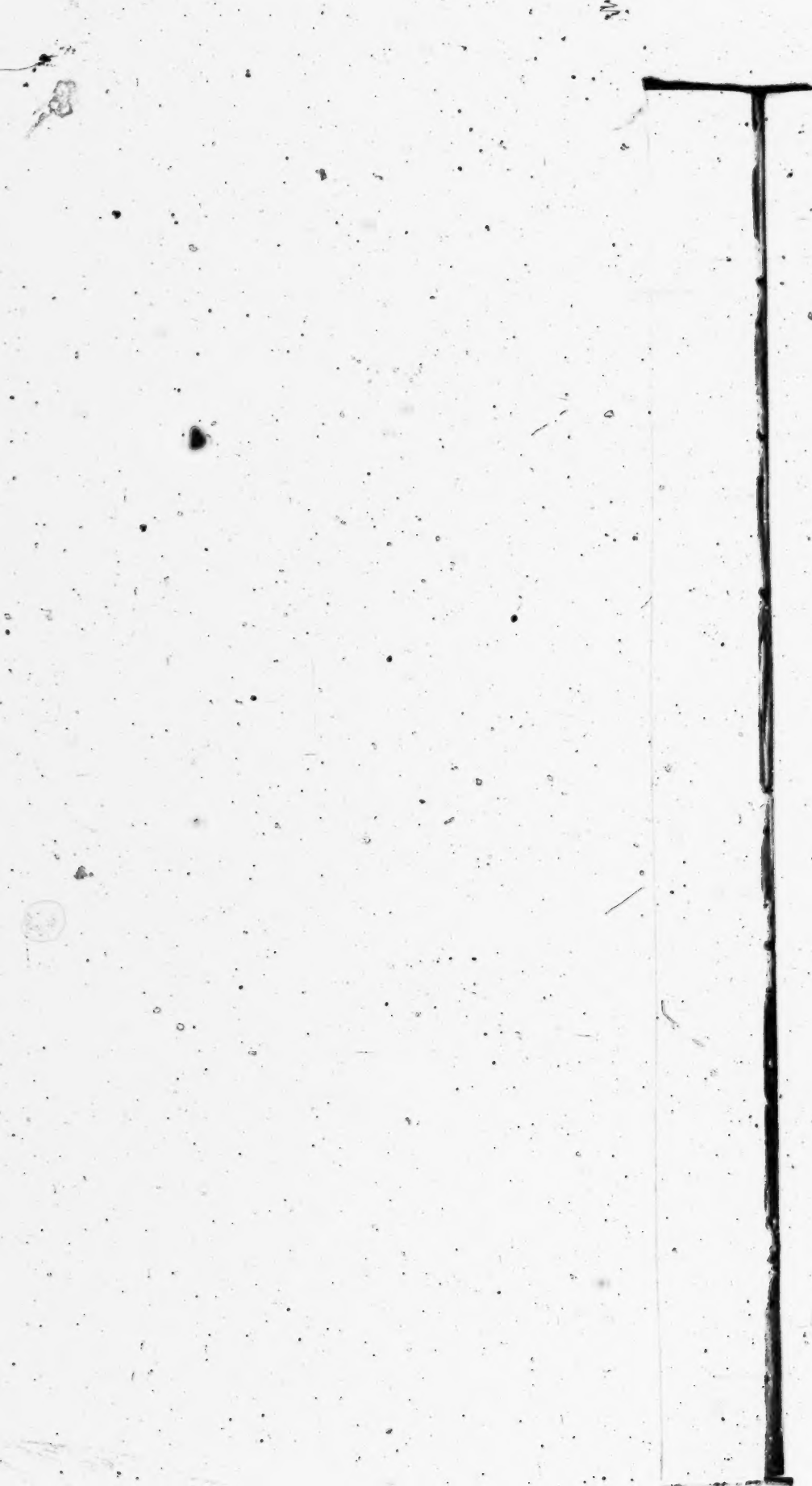

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1945.

No. 65.

ASHBACKER RADIO CORPORATION, A Michigan Corporation, *Petitioner,*

v.

FEDERAL COMMUNICATIONS COMMISSION, *Respondent.*

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia.

BRIEF FOR THE PETITIONER.

PAUL M. SEGAL,
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Attorneys for Petitioner.

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CITATIONS.

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BRIEF FOR THE PETITIONER.

OPINION BELOW.

The action of the Court below was a mere dismissal *per curiam* and there is no opinion (R. 39-40).

JURISDICTION.

The jurisdiction of this Court was invoked by petition for a writ of certiorari under Section 240(a) of the Judicial

Code, as amended by the Act of February 23, 1925, and Section 402(e) of the Communications Act of 1934. The petition was granted May 28, 1945 (R. 41).

INTRODUCTION.

In this brief the petitioner, Ashbacker Radio Corporation, will be referred to as Ashbacker; the respondent, Federal Communications Commission, will be referred to as the Commission.

All statutory and regulatory provisions which are cited in the brief are printed in the Appendix.

STATEMENT OF THE CASE.

Ashbacker is the licensee of WKBZ, the only broadcasting station at Muskegon, Michigan. The frequency assigned WKBZ, 1490 kilocycles, is one of poor propagation characteristics so that Ashbacker is not able to provide a satisfactory service to the entire Muskegon area (R. 9).

A substantial improvement in service can be accomplished by use of the frequency 1230 kilocycles, heretofore available for assignment in the Muskegon area (R. 9).

Accordingly, on April 29, 1944, Ashbacker filed with the Commission an application "for construction permit", dated April 27, 1944, requesting a change in frequency to 1230 kilocycles (R. 1).

This application was in conflict with an application filed March 20, 1944 by the Fetzer Broadcasting Company for a new station to operate at 1230 kilocycles at Grand Rapids, Michigan. It is agreed that the two applications were in conflict and mutually exclusive. It is entirely impossible for the two applicants to use the same frequency and either of them render any service whatsoever (R. 2).

The two applications came jointly before the Commission at a meeting held June 27, 1944. On June 28, 1944, the Commission announced that, without hearing, it had granted the Fetzer application and had "designated for hearing" the Ashbacker application (R. 2).

Ashbacker was without information as to what may have actuated the Commission in this step. Ashbacker believes its application was, in the public interest, superior to the Fetzer application and, had Ashbacker been accorded a hearing upon its application and an opportunity to test, at a public hearing, such claims or representations as were made on behalf of the Fetzer application, Ashbacker would have been able to demonstrate that, in the public interest, its application should have been granted and the Fetzer application denied.

Accordingly, pursuant to Section 405 of the Communications Act of 1934, Ashbacker filed with the Commission a request for hearing, rehearing or other relief. The request recited the foregoing and further pointed out: that the community of Grand Rapids wherein Fetzer was being authorized to construct a new station was already receiving adequate service from two existing stations; that, in addition, station WKZO at Kalamazoo, Michigan, also owned and operated by Fetzer already maintained studios at Grand Rapids and claimed coverage of that community; that the proposed grant to Fetzer violated Section 3.24 of the Rules and Regulations of the Commission in that it provided an additional service to a community already well served, at the expense of the listeners in the vicinity of Muskegon, who do not now have a single primary service; that the grant results in common ownership of two stations, each of which renders a primary service to a substantial percentage of the primary service area of the other, contrary to Section 3.35 of the Commission's regulations. It was argued that the action of the Commission denied Ashbacker the fair hearing to which each applicant is entitled under the Communications Act of 1934 (R. 2, 9-10).

Fetzer filed an opposition to the foregoing petition. The Commission (one Commissioner dissenting and two not participating) on September 12, 1944, published its "Decision and Order on Petition for Hearing, Rehearing and Other Relief", and denied the Ashbacker petition for rehearing (R. 8 ff.).

The decision of the Commission contains elaborate recitals of fact under a heading which begins, "A comparison of important facts relating to the two applications indicates the following: . . .," which facts were obtained and evaluated by the Commission *in camera* without according Ashbacker any opportunity to cross-examine witnesses or to adduce testimony in explanation or rebuttal (R. 8 ff.). The decision of the Commission also alleges:

> ". . . the Commission has not denied petitioner's application. It has designated the application for hearing as required by Section 309(a) of the Act. At this hearing, petitioner will have ample opportunity to show that its operation as proposed will better serve the public interest than will the grant of the Fetzer application as authorized June 27, 1944" (R. 13).

It is important to observe that many of the "facts" relied upon by the Commission are derived from the pleading filed by Fetzer and there is no evidentiary support for them (R. 10).

While the foregoing petition was pending and before the Commission decision thereon, the Commission, on August 1, 1944, issued and served upon Ashbacker a notice setting up a proposed "hearing" upon its application and prescribing the issues upon which it was proposed to hold the purported hearing. This notice stated that the Ashbacker application would not be granted by the Commission unless the issues specified in the notice were determined in favor of the applicant on the basis of a record duly and properly made by means of a formal hearing. Among the issues thus required to be determined in favor of the applicant was the question whether any interference which would result from the simultaneous operation of the Ashbacker station and the station which the Commission had just authorized for Fetzer (R. 2, 3).

Since it is conceded that Ashbacker and Fetzer cannot use 1230 kilocycles simultaneously without destructive interference, it becomes obvious that the purported hearing

was one in name only and that the grant of the Fetzer application was designed and intended as a denial without hearing of the petitioner's application.

Accordingly, pursuant to Section 402(b)(2) of the Communications Act, Ashbacker filed its notice of appeal to the United States Court of Appeals for the District of Columbia (R. 1 ff.).

On October 27, 1944, the Commission filed a motion to dismiss the appeal on the claim that the Court had no jurisdiction to entertain it (R. 18).

On November 9, 1944, Ashbacker filed its opposition to this motion (R. 32 ff.).

On January 24, 1945, the Court granted the Commission's motion and dismissed the appeal (R. 39-40).

SUMMARY OF ARGUMENT.

I. The action of the Commission which was the subject of the appeal to the Court below had the effect of depriving Ashbacker of the hearing to which it was entitled as a matter of law.

Sections 309(a) and 319(a) of the Communications Act of 1934 require a hearing before an application may be denied. The action of the Commission in considering two mutually-exclusive applications simultaneously, yet granting one and "setting for hearing" the other, makes the purported hearing a nominal one only. This results from the provisions of Section 319(b) that upon completion of construction, the Commission must issue a license (which license runs for three years) and from the provisions of Section 312(a) which provides that a license may be revoked only for specified causes, none of which would be applicable in the present instance. Hence the so-called hearing purportedly accorded to Ashbacker was a hearing wherein the Commission had rendered itself impotent to take favorable action.

II. The action of the Court below in dismissing the appeal deprived Ashbacker of the right of appeal accorded by Section 402(b) of the Communications Act of 1934.

The Court below dismissed the appeal, presumably on the ground urged in the motion to dismiss, namely: that Ashbacker had no appealable interest.

The action of the Commission in making a minute entry purporting to grant a hearing to Ashbacker, while concurrently making a grant of its application impossible, is in law tantamount to a denial of the application and thus brings Ashbacker within the provisions of Section 402(b)(1).

If, however, that section is to be so strictly construed as to apply only to a technical or formal order of denial, then certainly the action of the Commission in granting a mutually-exclusive application, the effect of which is to destroy the Commission's power to grant the Ashbacker application, makes Ashbacker a person aggrieved and whose interests are adversely affected within the provisions of Section 402(b)(2).

ARGUMENT.

Preliminary Statement.

Since this action was taken by order *per curiam*, without opinion, it may be assumed that the Court acted on the allegations and reasoning set up in the Commission's brief in support of its motion to dismiss; namely: that the two applications were mutually exclusive; that the Commission had made a "comparative examination of the two applications" and "found" the grant of the Fetzer application would serve public interest and had hence granted it while setting the petitioner's application for hearing; that the Commission in denying the petitioner's subsequent request for hearing had relied on all "facts" set up in the opinion thereon; that these actions did not constitute a denial of the petitioner's application; that hence the petitioner was not aggrieved or adversely affected within the meaning of

Section 402(b)(2) of the Communications Act; that the results of the petitioner's hearing cannot be foretold; that the Commission might, in future, in some way "modify" the Fetzer license or refuse to renew it,[1] that the petitioner's "opportunity to press its application to the fullest has in no way been impaired by a grant of the competing Fetzer application." (R. 18ff)

Whether or not the Court followed this argument, it did overrule, without opinion, its earlier decision in *Symons Broadcasting Company* v. *Federal Radio Commission* (1933), 62 App. D. C. 46.[2]

If the Court can further be assumed to have ruled that the "hearing" offered the petitioner was a fair hearing, then the Court also overruled, without opinion, its earlier decision in *Chicago Federation of Labor* v. *Federal Radio Commisison* (1930), 59 App. D. C. 333, which imposed a far more heavy burden than proving "public interest, convenience and necessity would be served," in the special case of the applicant who seeks to supplant an existing station.[3]

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[1] As a matter of fact, the Commission issues licenses for three year periods. Section 3.34, Rules and Regulations, FCC.

[2] Wherein it was said, at page 47:

"And in addition to this we think it not untimely to say that in granting and refusing applications for licenses, where two or more stations are applicant for the same frequency, it is the duty of the commission to grant either party asking it a hearing on due notice, for otherwise there is a denial of due process and a substitution in its place of arbitrary power, and that, of course, may not be countenanced."

[3] At page 334 it is said:

"It is not consistent with true public convenience, interest, or necessity, that meritorious stations like WBBM and KFAB should be deprived of broadcasting privileges when once granted to them, which they have at great cost prepared themselves to exercise, unless clear and sound reasons of public policy demand such action. The cause of independent broadcasting in general would be seriously endangered and public interests correspondingly prejudiced, if the licenses of established stations should arbitrarily be withdrawn from them and appropriated to the use of other stations. This statement does

I. The action of the Federal Communications Commission, which was the subject of the appeal to the Court below, had the effect of depriving Ashbacker of the hearing to which it was entitled as a matter of law.

One who makes application to the Commission for a modification of his license (in this case the applicant was seeking to change from an inferior to a better frequency) is entitled, under Sections 309(a) and 319(a) of the Communications Act, to a public hearing. This has been conceded by the Commission both in its purported opinion (R. 13) and in its brief in the Court below (R. 21, 22).

The difficulty relates, not to the right to a hearing, but to the Commission's rather unusual concept of what a hearing might be.

Much administrative agency activity relates to action upon various applications for licenses, certificates, permits and other similar authorizations. In many of these activities it is possible to act favorably upon unlimited numbers of of such requests. However, in the case of such things as public utility certificates of convenience and necessity and authorizations for airlines and radio stations, situations commonly arise where, because of economic and public service factors, or because of electrical interference, it is impossible or against public interest to grant more than one application for a particular facility.

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not imply any derogation of the controlling rule that all broadcasting privilege are held subject to the reasonable regulatory power of the United States, and that the public convenience, interest, and necessity are the paramount considerations."

To the same effect is *Journal Company* v. *Federal Radio Commission* (1931), 60 App. D. C. 92, 94: "Where a broadcasting station has been constructed and maintained in good faith, it is in the interests of the public and common justice to the owner of the station that its status should not be injuriously affected, *except for compelling reasons.*" (Emphasis supplied.) See also Evangelical Lutheran Synod v. Federal Communications Commission (1939), 70 App. D. C. 270, 272, and Yankee Network, Inc. v. Federal Communications Commission (1939), 71 App. D. C. 11, 22.

These considerations are particularly applicable in the field of radio broadcasting where there is so severe a scarcity of available frequencies.

It is illuminating to consider the Commission's activities in the present case in association with those revealed in *Federal Communications Commission* v. *National Broadcasting Company, et al.* (1943), 319 U. S. 239, and *Federal Communications Commission* v. *Sanders Brothers Radio Station* (1940), 309 U. S. 470, 642.

In the former case it was attempted by the Commission to deprive licensees of their right both to hearing and appeal when threatened with electrical interference. In the latter case, it was attempted to deprive licensees of their right to hearing and appeal when threatened with injury or extinction through competition. In the present case it is being attempted to deprive an applicant of the right to hearing and appeal as against a competing applicant for a facility which can be granted to only one.

Each of the three cases arose out of a recent departure from long-established practices of the Commission. The technique used against Ashbacker is a recently-instituted one.

Until 1939 it was the Commission's established practice to designate conflicting applications for consolidated hearing. The Rules recognized two types of conflict:

(a) *Patent* conflicts, apparent on the face of the application as in this case. Under these circumstances, Sec. 106.4 of the Commission's Rules provided:

> "In fixing dates for hearings the Commission will, so far as practicable, endeavor to fix the same date for hearings on all related matters which involve the same applicant, or arise out of the same complaint or cause; and for hearings on all applications which by reason of the privileges, terms, or conditions requested present conflicting claims of the same nature, excepting, however, applications filed after any such application has been designated for hearing."

See *Colonial Broadcasters, Inc.*, v. *Federal Communications Commission*, 70 App. D. C. 258.

(b) *Latent* conflicts not readily apparent from the application itself. Under these circumstances, the Commission had its "protest" rule (originally Sec. 45 FRC Rules & Regulations) which provided:

> "45. In any case where an application is granted in whole or in part without a hearing as provided in paragraph 44, any person, firm, or corporation aggrieved or whose interests are adversely affected by such grant, may obtain a hearing upon said application by adhering to the following procedure:
>
> "a. Such parties shall, within 20 days from the date on which public announcement of such grant is made at the principal office of the Commission, or from its effective date if a later date is specified by the Commission, file with the Commission and serve upon or mail to the applicant a protest in writing directed to the action of the Commission making such grant.
>
> "b. . . . .
>
> "c. Upon receipt by the Commission of such protest the application involved will be set for hearing in the same manner in which other applications are set for hearing and the applicant and other parties in interest notified thereof: *provided, however,* That upon such hearing the verified protest shall be taken as a pleading limiting the issues to be tried, but not as evidence of the facts therein stated."

See *Symons Broadcasting Company* v. *Federal Radio Commission*, 62 App. D. C. 46.

Although no changes were made in the statute itself, both these rules were abolished by the Commission in 1939. Since then it has asserted the right, in its discretion, to consolidate conflicting applications for hearing or to conduct unrelated hearings upon them at different times.

And now it goes further and asserts that it has the right to expand this theory into the practice now complained of.

In the present case there were two competing applications. They were considered by the Commission simultaneously (R. 2).

The situation prevailing on June 27, 1944, when the Commission considered these applications, was simply the following: there was one facility to allocate; there were two applications in proper form for that facility; the Commission in closed session undertook to dispose of the controversy by making an outright and unconditional grant to one of the competing applicants; it then undertook to satisfy the rights of the other applicant by making a minute entry that that applicant might have a "hearing."

Otherwise stated, the Commission undertook to interpret the word "hearing" as used in the statute to mean some formal convocation at which perfunctory evidence might be given concerning a license facility no longer available for grant.

Ordinarily the mere statement of the foregoing situation should suffice. The Gilbert and Sullivan arrangements for trial after the beheading bear too close an analogy. But since the Commission has argued its technical position so effectively below, some attention must be given to the reasoning involved.

The Commission contends that it will never lose control over its allocation to Fetzer and hence will be able to grant the Ashbacker application when "heard" if Ashbacker makes a sufficiently persuasive showing.

But this theory evaporates when the actions of the Commission, rather than its words, are studied.

Hearings before the Commission are held upon a document known as a "Notice of Hearing" which itemizes the issues that must be met by the applicant.

In the present case the Commission issued such a Notice. The Notice was served upon Ashbacker. It recited upon its face that the application would be denied unless Ashbacker could by evidence establish that the operation of his station at 1230 kc. would not cause any interference to the

operation of the Fetzer station, which the Commission had already authorized (R. 2, 3). The Commission thereby gave proof that it had no intention whatsoever, at any hearing, of considering the two applications upon a comparative basis. It rather asserts that at the hearing upon the Ashbacker application, it will regard the Fetzer grant as an accomplished fact.

It is difficult to understand how, under these circumstances, the Commission persists in using the word "hearing" to describe so palpably futile a performance.

The Commission's next contention starts from the assumption that the grant to Fetzer, though valid and an accomplished fact, may be revoked after a hearing upon the Ashbacker application.

Since Fetzer proposed an entirely new station, his application comes under Section 319(a) and is for construction permit. Section 319(b) provides that once such a construction permit is granted and the construction is completed the Commission is powerless to withhold a license unless some cause or circumstance arises or first comes to the knowledge of the Commission which would make the operation of the station against the public interest. Nothing of that sort exists in this case. Hence the Commission, if the Fetzer grant is valid, was committed to the issuance of a license. Such license, when issued, ran for the established term of years and during that term may not be tampered with except by order of revocation pursuant to Section 312(a) for certain very specific causes. None of those causes exists in this case and there is not the slightest suggestion anywhere in the record that the Commission might, at any time, even attempt to revoke the Fetzer license.

As regards the suggestion that the Commission might give Ashbacker a fair hearing through refusal to renew the Fetzer license in the future: this is obviously meaningless. There is no predicting what conditions may be at such a future time. The hearing to which an applicant is entitled is a reasonably immediate one under prevailing circumstances.

After Fetzer's station has been in operation for three years, the burden of displacing it upon a comparative showing is insuperable. *Peoria Broadcasting Company and Illinois Broadcasting Company,* 1 F. C. C. 167.

II. The action of the Court below in dismissing the appeal deprived Ashbacker of the right of appeal accorded by Section 402(b) of the Communications Act of 1934.

Section 402(b)(1) grants the right of appeal to any applicant whose application is denied by the Commission.

The foregoing recital of facts indicates that the Ashbacker application has in fact been refused.

However, it is apparently the position of the Commission (just as it has argued that any drumhead "hearing" is a hearing in law), that there cannot be a "refusal" in law unless the Commission chooses to make the physical minute entry refusing an application.

If this be correct, then certainly Ashbacker is protected in its right to appeal by the provisions of Section 402(b) (2), allowing an appeal to any person who is aggrieved or adversely affected by decision of the Commission granting or refusing the application of another.

The action of the Commission granting the Fetzer application and thereby making it impossible to grant the pending Ashbacker application, or even to hold a sincere hearing upon it, is certainly an aggrievement and injury in the legal sense and has on earlier occasion been so recognized by the Commission. *Matter of the Midnight Sun Broadcasting Company,* 6 F. C. C. 319.

CONCLUSION.

It is apropos to quote from the decision of the Commission *In The Matter of Powel Crosley Jr., et al.* (September, 1945, Mim. 84571).

> "While an administrative agency is not bound by the doctrine of *stare decisis* we believe that sound public administration demands respect for established

policies. We believe that any change in policy as fundamental as the one advocated by the minority should, if it is to be effective, be brought about by legislation or by rules and regulations of general applicability. If matters of such importance are left to case-to-case decisions, basic policies can be expected to shift back and forth with changes in membership of the Commission making it impossible for the public to know from one day to the next what the policy is. We believe that administrative agencies such as this Commission have an obligation to adhere to uniform policies, and when developments dictate a change, to adopt after appropriate notice a rule of general application so as to avoid the color of discrimination in a particular case."

Respectfully submitted,

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APPENDIX.

Communications Act of 1934 (48 Stat. 1062, U. S. C. Title 47, Sec. 151 et seq.):

Sec. 309(a). If upon examination of any application for a station license or for the renewal or modification of a station license the Commission shall determine that public interest, convenience, or necessity would be served by the granting thereof, it shall authorize the issuance, renewal, or modification thereof in accordance with said finding. In the event the Commission upon examination of any such application does not reach such decision with respect thereto, it shall notify the applicant thereof, shall fix and give notice of a time and place for hearing thereon, and shall afford such applicant an opportunity to be heard under such rules and regulations as it may prescribe.

Sec. 312(a). Any station license may be revoked for false statements either in the application or in the statement of fact which may be required by section 308 hereof, or because of conditions revealed by such statements of fact as may be required from time to time which would warrant the Commission in refusing to grant a license on an original application, or for failure to operate substantially as set forth in the license, or for violation of or failure to observe any of the restrictions and conditions of this Act or of any regulation of the Commission authorized by this Act or by a treaty ratified by the United States: *Provided, however,* That no such order of revocation shall take effect until fifteen days' notice in writing thereof, stating the cause for the proposed revocation, has been given to the licensee. Such licensee may make written application to the Commission at any time within said fifteen days for a hearing upon such order, and upon the filing of such written application said order of revocation shall stand suspended until the conclusion of the hearing conducted under such rules as the Commission may prescribe. Upon the conclusion of said hearing the Commission may affirm, modify, or revoke said order of revocation.

Sec. 319(a). No license shall be issued under the authority of this Act for the operation of any station the

construction of which is begun or is continued after this Act takes effect, unless a permit for its construction has been granted by the Commission upon written application therefor. The Commission may grant such permit if public convenience, interest, or necessity will be served by the construction of the station. This application shall set forth such facts as the Commission by regulation may prescribe as to the citizenship, character, and the financial, technical, and other ability of the applicant to construct and operate the station, the ownership and location of the proposed station and of the station or stations with which it is proposed to communicate, the frequencies desired to be used, the hours of the day or other periods of time during which it is proposed to operate the station, the purpose for which the station is to be used, the type of transmitting apparatus to be used, the power to be used, the date upon which the station is expected to be completed and in operation, and such other information as the Commission may require. Such application shall be signed by the applicant under oath or affirmation.

Sec. 319(b). Such permit for construction shall show specifically the earliest and latest dates between which the actual operation of such station is expected to begin, and shall provide that said permit will be automatically forfeited if the station is not ready for operation within the time specified or within such further time as the Commission may allow, unless prevented by causes not under the control of the grantee. The rights under any such permit shall not be assigned or otherwise transferred to any person without the approval of the Commission. A permit for construction shall not be required for Government stations, amateur stations, or stations upon mobile vessels, railroad rolling stock, or aircraft. Upon the completion of any station for the construction or continued contruction of which a permit has been granted, and upon it being made to appear to the Commission that all the terms, conditions, and obligations set forth in the application and permit have been fully met, and that no cause or circumstance arising or first coming to the knowledge of the Commission since the granting of the permit would in the judgment of the Commission, make the opera-

tion of such station against the public interest, the Commission shall issue a license to the lawful holder of said permit for the operation of said station. Said license shall conform generally to the terms of said permit.

Sec. 402(b). An appeal may be taken, in the manner hereafter provided, from decisions of the Commission to the Court of Appeals of the District of Columbia in any of the following cases:

Sec. 402(b)(1). By any applicant for a construction permit for a radio station, or for a radio station license, or for renewal of an existing radio station license, or for modification of an existing radio station license, whose application is refused by the Commission.

Sec. 402(b)(2). By any other person aggrieved or whose interests are adversely affected by any decision of the Commission granting or refusing any such application.

Sec. 402(c). At the earliest convenient time the court shall hear and determine the appeal upon the record before it, and shall have power, upon such record, to enter a judgment affirming or reversing the decision of the Commission, and in event the court shall render a decision and enter an order reversing the decision of the Commission, it shall remand the case to the Commission to carry out the judgment of the court: *Provided, however,* That the review by the court shall be limited to questions of law and that findings of fact by the Commission, if supported by substantial evidence, shall be conclusive unless it shall clearly appear that the findings of the Commission are arbitrary or capricious. The court's judgment shall be final, subject, however, to review by the Supreme Court of the United States upon writ of certiorari on petition therefor under section 240 of the Judicial Code, as amended, by appellant, by the Commission, or by any interested party intervening in the appeal.

Sec. 405. After a decision, order, or requirement has been made by the Commission in any proceeding, any party thereto may at any time make application for rehearing of the same, or any matter determined therein, and it shall be lawful for the Commission in its discretion to grant such a rehearing if sufficient rea-

son therefor be made to appear: *Provided, however,* That in the case of a decision, order, or requirement made under Title III, the time within which application for rehearing may be made shall be limited to twenty days after the effective date thereof, and such application may be made by any party or any person aggrieved or whose interests are adversely affected thereby. Applications for rehearing shall be governed by such general rules as the Commission may establish. No such application shall excuse any person from complying with or obeying any decision, order, or requirement of the Commission, or operate in any manner to stay or postpone the enforcement thereof, without the special order of the Commission. In case a rehearing is granted, the proceedings thereupon shall conform as nearly as may be to the proceedings in an original hearing, except as the Commission may otherwise direct; and if, in its judgment, after such rehearing and the consideration of all facts, including those arising since the former hearing, it shall appear that the original decision, order, or requirement is in any respect unjust or unwarranted, the Commission may reverse change, or modify the same accordingly. Any decision, order, or requirement made after such rehearing, reversing, changing, or modifying the original determination, shall be subject to the same provisions as an original order.

Federal Communications Commission Rules and Regulations:

Sec. 3.24. Broadcast facilities; showing required. An authorization for a new standard broadcast station or increase in facilities of an existing station will be issued only after a satisfactory showing has been made in regard to the following, among others:

(a) That the proposed assignment will tend to effect a fair, efficient, and equitable distribution of radio service among the several states and communities.

(b) That objectionable interference will not be caused to existing stations or that if interference will be caused the need for the proposed service outweighs the need for the service which will be lost by reason of such interference. That the proposed station will not

suffer interference to such an extent that its service would be reduced to an unsatisfactory degree. (For determining objectionable interference, see Engineering Standards of Allocation and Field Intensity Measurements in Allocation.)

(c) That the applicant is financially qualified to construct and operate the proposed station.

(d) That the applicant is legally qualified. That the applicant (or the person or persons in control of an applicant corporation or other organization) is of good character and possesses other qualifications sufficient to provide a satisfactory public service.

(e) That the technical equipment proposed, the location of the transmitter, and other technical phases of operation comply with the regulations governing the same, and the requirements of good engineering practice. (See technical regulations herein and Locations of Transmitters of Standard Broadcast Stations.)

(f) That the facilities sought are subject to assignment as requested under existing international agreements and the Rules and Regulations of the Commission.

(g) That the public interest, convenience, and necessity will be served through the operation under the proposed assignment.

Sec. 3.34. Normal license period. All standard broadcast station licenses will be issued for a normal license period of 3 years. Licenses will be issued to expire at the hour of 3 a. m., Eastern Standard Time, in accordance with the following schedule, and at three-year intervals thereafter: * * *.

Sec. 3.35. Multiple ownership. No license shall be granted for a standard broadcast station, directly or indirectly owned, operated or controlled by any person where such station renders or will render primary service to a substantial portion of the primary service area of another standard broadcast station, directly or indirectly owned, operated or controlled by such person, except upon a showing that public interest, convenience and necessity will be served through such multiple ownership situation.

Judicial Code:

Sec. 240(a). In any case, civil or criminal, in a circuit court of appeals, or in the Court of Appeals of the District of Columbia, it shall be competent for the Supreme Court of the United States, upon the petition of any party thereto, whether Government or other litigant, to require by certiorari, either before or after a judgment or decree by such lower court, that the cause be certified to the Supreme Court for determination by it with the same power and authority, and with like effect, as if the cause had been brought there by unrestricted writ of error or appeal.